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Book Reviews: How to Prove Damages in Wrongful Personal Injury and Death Cases

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case materials would doubtless find the book well worth the investment. On the American side, the book's reading public is obviously much more limited. Every law school library should have a copy to place alongside *Hanbury's Modern Equity* and *Lewin on Trusts*, or similar English works. American professors of Trusts and Estates will find its coverage of familiar subjects clear and refreshing. More often than not, unfamiliar areas will be worth dipping into for insights that can be passed along to students. Finally, American law students trying to understand basic concepts or reviewing for exams will profit from the time spent in browsing through the pages of the book.

To return now to the pedagogical theme posited at the outset of this review, *Trusts & Estates, Cases & Materials*, by Maudsley and Burn, richly deserves a place among the category of "course-books" on the law. It is not intended to do the job of an American casebook but it will do much to give English readers a feel for the case method. Conversely, for American readers it shows the English case and statutory materials as products of a living system and not simply as examples of what used to be "at common law" or "in equity" in England.

HOW TO PROVE DAMAGES IN WRONGFUL PERSONAL INJURY AND DEATH CASES. By I. Duke Avnet, Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1973. Pp. 280. \$16.00. Mr. Avnet received his A.B. and J.D. from New York University in 1932, and is now practicing law in Baltimore, Maryland. Reviewed by Eugene J. Davidson.*

It is not uncommon to hear of large dollar negligence verdicts where the liability was somewhat dubious and the injuries were less than substantial, and of minimal verdicts where both liability and substantial injuries seemingly were clear. Indeed this reviewer can recall an instance in which two suits arising from the same accident were tried on the same day by different counsel. One verdict was almost four times as great as the other, although the difference in the injuries was not that significant. The logical question is why? Was it because of the trial judge? Jury composition? Defense counsel? Plaintiff's mannerisms? None of these factors could be said to account for the disparity in the verdicts, as the judge in each case was equally accustomed to negligence litigation, the jurors came from the same panel, defense counsel were from the same insurance carrier's stable of trial counsel, and there was no ostensible difference in the conduct or appearance of the plaintiffs. There was, however, a clear distinction in the trial strategy of plaintiff's

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counsel. Counsel who secured the larger verdict emphasized the damages aspect. His philosophy is best described as "selling" the jury on plaintiff's injuries and losses while allowing the liability issue to assume a secondary role. The other counsel concentrated on establishing liability so that the jury's attention, to a certain extent, was diverted from the plaintiff's injuries and economic losses.

Which was the better approach? Hindsight would seem to favor the strategy which emphasized the damages, although in defense of the liability approach it might be said that establishing injuries and damages would have been of little solace to a plaintiff who heard the jury foreman say, "Verdict for the Defendant."

Clearly, the more successful negligence trial lawyers have recognized something that their less experienced brothers at the bar would do well to learn, *i.e.* that there is more to a tort case than proof of negligence; that the jury's verdict and its dollar amount can be influenced more by a well prepared demonstration of the medical aspects of the plaintiff's injuries and his pecuniary loss in language which the jury can understand and appreciate, than by the extent of defendant's negligence. Lawyers have studied the substantive aspects of tort law and there is no dearth of literature which seeks to teach, instruct and assist counsel in how to become a successful negligence lawyer. Indeed Mr. Avnet has indexed seven pages of such materials. Why then another, and why *How to Prove Damages in Wrongful Personal Injury and Death Cases?*

The author states that his approach is the "new, higher award winning approach," which will enable the reader to "prove losses scientifically." In detailing his methodology, he takes the reader from the onset of the retainer through the significant areas of pretrial preparation and trial conduct. Thus, Mr. Avnet describes, *inter alia*, what to do before trial, how to prepare the plaintiff for the witness stand, how to prepare the medical witness, how to use hospital records, how to prove pecuniary losses scientifically and how to instruct the jury on damages. A substantial portion of the book is in the form of illustrative material, which suggests that the author is putting into practice his theme that it is more important to communicate the significance of the material than just to present the facts.

The book contains many verities which lawyers know but sometimes fail to recall; as for example, that busy doctors (like so many busy lawyers) may have little time for extensive reading on a particular subject and, therefore, may not be an adequate match for trial counsel who has done his medical homework; or that a routine civil trial can be a bore, and a doctor's prosaic recital of injuries or a technical dissertation will do little to attract the bored juror's attention; or the simple reminder of the need to arrange with your adversary for your experts (who, presumably, are compensated on a time basis) to take the witness stand at a prearranged time and thereby reduce the fees they

would otherwise receive. These little hints are a few random gleanings of the many nuggets to be found in Mr. Avnet's book.

Many will also find its extensive source references, checklists, mortality, work career and discount tables and its Key to Interpretive Hospital Symbols (almost 18 pages of same) most useful.

The book is primarily a Hornbook-type presentation. This has its own merit since a work of this nature should be both broad in range of subject matter, interesting and reasonable in size (in this case 280 pages, including tables).

Which leads us to the final question: Does the book's value warrant its acquisition? For the young lawyer and for his older brothers whose exposure to negligence work is sporadic, the answer is yes. It is carefully written, easy to follow and well illustrated. It provides a capsulized do-it-yourself guide, and a guide is what was promised. Seasoned negligence practitioners may find it useful as a quick reference. It very likely will find a place in many a lawyer's library.

A GUIDE TO SECURITIES AND EXCHANGE COMMISSION RULE 144, 67 NW. U.L. REV. (SUPP. 1972). Pp. 152. \$15.00. Reviewed by Ronald M. Shapiro.*

The editors of the *Northwestern Law Review* have, in their own words, published a guide "to provide lawyers, brokers, control persons, and others with a single, easy to use volume of articles and reference materials that can be used to solve most problems involved in the resale of restricted and control securities under Securities and Exchange Commission Rule 144."¹ While their stated purpose may not be entirely achieved due to the rapidity of change in the so-called "lettered stock" area, the editors have nevertheless prepared a collection of materials that will serve as a solid background reference work and, in a number of instances, a practice aid.

The book is a collection of essays and appendices which evolved from a two day seminar on Rule 144 held at Northwestern University in early 1972. Certain of its contributions may be somewhat dated, but it does not appear that the book, as a sum of its parts, will accumulate bookshelf dust for several years.

The overall layout of the book is set within a thoughtful framework. After a brief preface, several articles review the historical stage on which the lettered stock Rule 144 entered. The succeeding articles then state and analyze some of the very technical and detailed components of the Rule and related SEC releases. The two year holding period, the

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1. *Preface* to *Nw. U.L. Rev. (Supp. 1972)*.